



COMMISSION OF THE EUROPEAN COMMUNITIES

CORRIGENDUM

Rediffusion des deux propositions
de décisions du Conseil suite à la
révision de la partie législative par
les juristes linguistes

Brussels, 15.12.1997
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(concerne toutes les versions linguistiques)

**Proposal for a
COUNCIL DECISION**

concerning the rules for the participation of undertakings, research centres and
universities and for the dissemination of research results for the implementation
of the Fifth Framework Programme of the European Community
(1998-2002)

**Proposal for a
COUNCIL DECISION**

concerning the rules for the participation of undertakings, research centres and
universities and for the implementation of the Fifth Framework Programme
of the European Atomic Energy Community (Euratom)
(1998-2002)

(presented by the Commission)

EXPLANATORY MEMORANDUM

Alongside the framework programmes and specific programmes, the rules on participation and dissemination complete the legislative architecture of Community policy on research and technological development.

Forming a coherent whole, they constitute the administrative part of this measure, laying down the rules to be complied with by all research players wishing to take part in the specific programmes and specifying the participants' obligations regarding the use and dissemination of the research results. These obligations represent the *quid pro quo* of the Community's financial contribution.

This proposal follows the lines of the existing rules which were drawn up for the 4th Framework Programme. It also reflects the conclusions of the Davignon panel assessment, the structure and priorities of the 5th Framework Programme and the experience gained in managing the 4th Framework Programme.

This is therefore an operation of the "innovation within continuity" kind, and it has been carried out with a concern to make the proposed rules transparent and comprehensible.

With regard to **continuity**, mention should be made of:

- the calls for proposals, published in the Official Journal of the European Communities, which are an excellent tool for selecting RTD actions while ensuring that all research players enjoy equal opportunities;
- the transnational nature of the research consortia carrying out RTD projects;
- the requirement that international organisations or legal entities established in third countries participate by being added to a minimum number of entities established in a Member State or Associated State, and that such participation be permitted only if it is in the interest of Community policies;
- the conclusion of contracts on the basis of actual costs;
- the obligation either to use or to disseminate the research results.

The following constitute **innovations**:

- the inclusion of common definitions for all specific programmes;
- rules governing the participation of legal entities established in third countries, drawn up in accordance with the guidelines for the 5th Framework Programme and applicable to all specific programmes;
- the participation of legal entities established in third countries which have signed an international agreement in particular on the basis of Article 130m, provided the agreement is actually implemented;

- the definition of eligible costs;
- the option of paying general costs on a flat-rate basis so as to facilitate participation on the basis of the total cost;
- varying the rules on dissemination and use according to the project's proximity to the market, which is - in principle - reflected by the level of the Community financial contribution;
- encouraging the use of results by making it possible, under certain conditions, to sign exclusive rights agreements, especially where projects are close to the market;
- the obligation to disseminate results even if they are not being used;
- improved protection for participants' pre-existing know-how which is necessary for carrying out the RTD action;
- a more important role for the technological implementation plan, which now constitutes a detailed and structured instrument for monitoring the use made of the research results.

Given the complexity and technical nature of the subject matter, the Council Decision will be supplemented by detailed rules of application, subject to the favourable opinion of the *ad hoc* committee, as was already the case with the dissemination rules for the 4th Framework Programme in the case of the Treaty establishing the European Community.

Finally, with regard to the protection of the Community's financial interests, and more particularly to administrative sanctions, this Decision will be supplemented by a Council Regulation covering all internal policies. With this in view, standard contracts under the 5th Framework Programme will be drafted in stronger terms to enable Commission staff to provide the best possible guarantee of sound financial management.

**Proposal for a
COUNCIL DECISION**

concerning the rules for the participation of undertakings, research centres and universities and for the dissemination of research results for the implementation of the Fifth Framework Programme of the European Community (1998-2002)

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130j and the second paragraph of Article 130o thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the Economic and Social Committee²,

Acting in accordance with the procedure referred to in Article 189c of the Treaty³ in cooperation with the European Parliament,

Whereas the Fifth Framework Programme of the European Community activities in the field of research, technological development and demonstration (1998-2002) (hereinafter referred to as "the Fifth Framework Programme") was adopted by the Decision of the European Parliament and of the Council No .../.../EC⁴; whereas the detailed rules for participation by the Community, as set out in Annex IV to that Decision, must be supplemented by other provisions to be laid down in accordance with Article 130j and the second paragraph of Article 130o of the Treaty,

Whereas the new provisions should be part of a complete, coherent and transparent framework so that the specific programmes implementing the Fifth Framework Programme may be carried out in a harmonized manner;

Whereas the rules for the participation of undertakings, research centres and universities must be adapted to the nature of the research and technological development activities, including demonstration activities (hereinafter referred to as "indirect RTD actions"); whereas, moreover, they may vary depending on whether the participant is based in a Member State, an Associated State or a third country and on its legal structure;

¹ OJ C

² OJ C

³ Opinion of the European Parliament of [...], Council common position of [...] and Decision of the European Parliament of [...].

⁴ OJ L

Whereas, under the Fifth Framework Programme, the participation of legal entities of third countries should be envisaged, in particular on the basis of international agreements; whereas, however, the agreements concluded with the Community, in particular on the basis of Article 130m of the Treaty, must be implemented in accordance with the principle of reciprocity and the protection of intellectual and industrial property rights; whereas the Community's legal entities must accordingly enjoy genuine access to the research programmes of the third country concerned;

Whereas, in the specific case of small and medium-sized enterprises, particular stress should be laid on indirect RTD actions designed to encourage their participation, since they can contribute to the creation and maintenance of jobs and to innovation; whereas, in the case of research and further to the approach of the fourth framework programme, account should be taken not only of firms which meet the definition of small and medium-sized enterprises given in Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises⁵ but also of enterprises employing between 250 and 499 persons, in view of their potential impact on employment;

Whereas the Joint Research Centre (JRC) takes part in indirect RTD actions on the same basis as legal entities established in a Member State or in an Associated State;

Whereas the Community financial participation must be paid to the participants against justification of the eligible costs of the indirect RTD action, although other more appropriate methods may be used;

Whereas the RTD activities should be carried out in compliance with the fundamental principles of our society and, in particular, in compliance with ethical principles which must be included among the criteria for selecting proposals for indirect RTD actions;

Whereas the rules for the dissemination of research results must guarantee the protection of rights linked to obtaining and using knowledge;

Whereas the rules must take account of the interests of the Community and the legitimate interests of the parties to any contract concluded as a result of the selection of the proposal for an indirect RTD action;

Whereas, in the case of indirect RTD actions, the rules must, generally speaking, be adapted to the level of the Community financial participation or the proximity to the market of the RTD activity in question, including demonstration;

Whereas ownership of the knowledge resulting from indirect RTD actions is normally determined in accordance with the level of the Community financial participation;

Whereas, in the case of indirect RTD actions, the knowledge must be used or, failing that, disseminated;

Whereas agreements concerning exclusive rights may be necessary to facilitate exploitation of the knowledge; whereas such agreements must comply with the applicable rules on competition;

⁵ OJ L 107, 30.4.1996, p. 4.

Whereas, in the case of certain indirect RTD actions, a technological implementation plan must be produced by the contractors to enable the Commission to monitor the use and dissemination of the knowledge;

Whereas RTD activities should be carried out in accordance with the principles of sound financial management;

Whereas, to the extent necessary for achieving their objectives, the specific programmes may set out in greater detail or supplement the rules for the participation of undertakings, research centres and universities and for the dissemination of research results;

Whereas, in order to ensure coherence between the activities carried out under the Fifth Framework Programme and those undertaken pursuant to Council Decision .../Euratom of concerning the Fifth Framework Programme of the European Atomic Energy Community (Euratom) for research and training activities (1998-2002)⁶, the present Decision and Council Decision 97/.../Euratom of concerning the rules for the participation of undertakings, research centres and universities⁷ should be adopted simultaneously and for the same period,

HAS DECIDED AS FOLLOWS:

CHAPTER I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Decision:

- (a) "RTD activities" means the research and technological development activities, including demonstration activities, described in Annex II to the Fifth Framework Programme;
- (b) "indirect RTD actions" means one of the two ways of implementing RTD activities, as described in Annex IV to the Fifth Framework Programme. Such actions are carried out by third parties under contracts concluded with the Community; the JRC may take part in such actions under the conditions laid down in Article 7;
- (c) "direct RTD actions" means one of the two ways of implementing RTD activities, as described in Annex IV to the Fifth Framework Programme. Such actions are carried out by the JRC;

⁶ OJ

⁷ OJ

- (d) "Associated State" means a State which is party to an international agreement concluded with the Community, in particular on the basis of Article 130m of the Treaty, under which the State concerned makes a financial contribution to the Fifth Framework Programme. The said agreement relates to cooperation in research, technological development and demonstration;
- (e) "third country" means a country which is neither a Member State nor an Associated State;
- (f) "legal entity" means:
- any natural person
- or
- any legal person, provided that it has been established under Community law or the applicable national law and has been given legal personality or has the capacity, in its own name, to hold rights and obligations of all kinds, to conclude contracts and to be a party to legal proceedings;
- (g) "international organization" means any association of States, other than the Community, established on the basis of a Treaty or similar act, having common institutions and an international legal personality distinct from that of its Member States;
- (h) "potential user of RTD results" means any legal entity, any international organization or the JRC which, by virtue of its needs and capacities - whether scientific, technological, economic or social - has a specific contribution to make to the use or the ensuring of the use of the results of indirect RTD actions;
- (i) "small and medium-sized enterprises" (hereinafter referred to as "SMEs"), means:
- enterprises which meet the criteria set out in Commission Recommendation 96/280/EC, namely those:
 - (i) having fewer than 250 employees,
 - (ii) having either an annual turnover not exceeding ECU 40 million or an annual balance-sheet total not exceeding ECU 27 million,
 - (iii) conforming to the criterion of independence as defined in the Recommendation;
 - enterprises which have between 1 and 499 employees and meet the other criteria set out in the Recommendation cited in the first indent in the specific case of cooperative research projects and exploratory phase awards as defined in Annex IV to the Fifth Framework Programme;

- (j) "knowledge" means the results of RTD actions under the Fifth Framework Programme;
- (k) "dissemination" means the disclosure of knowledge by any appropriate means other than the publication resulting from the formalities for protecting the knowledge, for the purposes of promoting scientific and technical progress;
- (l) "use" means the direct or indirect use of knowledge in research activities or for the purposes of exploitation;
- (m) "exploitation" means the use of knowledge for producing and marketing a product or for creating and providing a service;
- (n) "pre-existing know-how" means the information which is held by the proposers prior to the conclusion of the contracts referred to in Article 12 of this Decision and necessary for the proper execution of an indirect RTD action, and the rights attaching thereto.

Article 2

Interests of the Community

The interests of the Community, as referred to in Articles 6, 16, 17, 18 and 20, shall be assessed with particular regard to:

- (a) the objective of strengthening the international competitiveness of Community industry;
- (b) the needs of other Community policies in support of which the RTD actions are carried out;
- (c) the existence of scientific and technical cooperation agreements between the Community and third countries or international organizations;
- (d) the objective of providing appropriate incentives for maintaining and creating jobs in the Community.

CHAPTER II

RULES FOR THE PARTICIPATION OF UNDERTAKINGS, RESEARCH CENTRES AND UNIVERSITIES

Article 3

Scope

The rules laid down in this Chapter shall apply to the participation of legal entities and international organizations and of the JRC in indirect RTD actions.

SECTION 1: CONDITIONS FOR PARTICIPATION

Article 4

Number of participants in indirect RTD actions

1. Indirect RTD actions shall be carried out by:
 - (a) either at least two mutually independent legal entities established in two different Member States or in a Member State and an Associated State;
 - (b) or at least one legal entity established in a Member State or in an Associated State and the JRC;
 - (c) or one or several legal entities established in a third country or international organizations, acting in cooperation with the minimum number of legal entities established in a Member State or Associated State and the JRC, as required in points (a) or (b).
2. Indirect RTD actions to be carried out by a single participant, in view of the nature of the RTD activity to be undertaken or the nature of the indirect RTD action, must be carried out by:
 - (a) a legal entity established in a Member State, in an Associated State or in a third country,
 - (b) an international organization,
 - (c) the JRC.

Article 5

Conditions for the participation of legal entities from the Member States and associated States

1. Any legal entity established in a Member State or in an associated State may take part in indirect RTD actions and receive financing from the Fifth Framework Programme, provided that:
 - (a) in the case of indirect RTD actions other than those referred to in points (b) to (e):
 - it is carrying out or is about to carry out a research, technological development or demonstration activity,
 - or
 - it contributes to the dissemination and use of results under the specific programme on "Innovation and participation of SMEs",
 - or
 - it is a potential user of RTD results;

- (b) in the case of thematic networks and concerted actions:
 - it meets at least one of the conditions set out in point (a),
 - or
 - by virtue of its knowledge of the relevant area of research, it is in a position to contribute substantial added value to the quality of the work to be undertaken;
 - (c) in the case of exploratory phase awards, it is a SME or, exceptionally, a potential user of RTD results. In the latter case the entity will not normally receive financing from the Fifth Framework Programme;
 - (d) in the case of cooperative research projects, it is an SME which is a potential user of RTD results;
 - (e) in the case of accompanying measures, it has the necessary technical know-how to carry out the indirect RTD action in question.
2. Where the purpose of the indirect RTD action concerned so permits, any legal entity referred to in paragraph 1 must carry out the major part of the work within the Member States or Associated States.

Article 6

Conditions for the participation of legal entities from third countries and of international organizations

1. Without prejudice to the conditions set out in paragraph 2, any legal entity established in a third country and any international organization may take part in indirect RTD actions without financing from the Fifth Framework Programme, provided that:
 - (a) its participation is in the interests of the Community,
 - (b) the number of participants in the proposal for an indirect RTD action is in accordance with Article 4,

and

 - (c) it meets the conditions laid down in Article 5(1) for legal entities from the Member States and associated States.
2. Any legal entity established in a third country may take part:
 - (a) without financing from the Fifth Framework Programme:
 - in the specific programmes open to the third country in which it is established, in accordance with an international agreement concluded with the Community in particular under Article 130m of the Treaty, in accordance with the principles, conditions and limits laid down in that agreement;

- in the specific programmes open to the third country in which it is established, without an international agreement, in accordance with the Fifth Framework Programme;
 - in cases other than those referred to in the first and second indents, in any specific programme provided that its participation is duly justified, that is, it is essential for implementing all or part of the specific programme in accordance with the objectives of that programme;
- (b) exceptionally, with financing from the Fifth Framework Programme provided that it corresponds to one of the cases referred to in point (a) and provided that the financing is duly justified, that is, it is essential for achieving the objectives of the indirect RTD action in question.

This point shall not apply to training fellowships as defined in Annex IV to the Fifth Framework Programme.

3. In the case of RTD activities under the specific programme on "Confirming the international role of Community research", any legal entity established in a third country may take part and receive financing from the Fifth Framework Programme provided that the third country in question is referred to in the Fifth Framework Programme and the legal entity meets the conditions laid down in paragraph 1.
4. Any international organization may, exceptionally, receive financing from the Fifth Framework Programme provided that:
- (a) in the case of indirect RTD actions other than accompanying measures,
- the financing is duly justified, that is, it is essential for achieving the objectives of the indirect RTD action in question,
- and
- the international organization has, or is about to have, a basic structure for the proposed work located:
 - (i) in a Member State or Associated State,
 - or
 - (ii) in a third country, provided that the structure is essential for carrying out the proposed work;
- (b) in the case of accompanying measures, it has the necessary technical skills and know-how, which are not readily accessible or are unavailable in the Member States or the Associated States.

Article 7

Conditions for the participation of the JRC

Subject to the budgetary and administrative measures necessary to enable the JRC to take part in indirect RTD actions, the JRC shall be bound by the same conditions and have the same rights and obligations as the legal entities established in a Member State or an Associated State taking part in indirect RTD actions.

Article 8

Conditions relating to resources

1. Any legal entity, international organization and the JRC must:
 - when filing its proposal for an indirect RTD action, have at least the potential resources needed for carrying it out;
 - when the contract is signed, have the main resources needed for carrying it out.
2. The resources needed for carrying out the indirect RTD action shall comprise human resources, infrastructure, financial resources and, where appropriate, intangible property.

SECTION 2 - PROCEDURES

Article 9

Procedures to be applied

1. Indirect RTD actions other than accompanying measures shall be the subject of calls for proposals published in the *Official Journal of the European Communities*. The calls for proposals may be preceded by a call for expressions of interest of an informative nature.
2. Accompanying measures shall, where appropriate, be the subject of:
 - calls for proposals, in accordance with procedures identical to those described in paragraph 1,
 - public procurement procedures, where the indirect RTD action consists of a purchase or a service, in accordance with the applicable provisions,
 - spontaneous applications for a subsidy, addressed to the Commission by a legal entity or international organization,
 - invitations to apply, where the measure concerned requires the Commission to take account, in a balanced fashion, of the various research players, without prejudice to other procedures designed to achieve the same result in the case of the high-level experts referred to in Article 5(2) of the Fifth Framework Programme.

3. Indirect RTD actions carried out as pilot schemes shall be governed by procedures appropriate to those actions.

Article 10

Selection criteria and conditions applicable in accordance with the type of procedure

1. Proposals for indirect RTD actions resulting from calls for proposals and pilot schemes shall be selected on the basis of the conditions for participation set out in Articles 4 to 8 and the criteria set out in points (a), (b) and (c), which shall be applied in accordance with the category of indirect RTD action and with the nature of the RTD activity:
 - (a) the categories of criteria listed in Annex I to the Fifth Framework Programme;
 - (b) the additional criteria set out in the specific programme concerned;
 - (c) the following criteria:
 - the innovative nature of the proposal for an indirect RTD action,
 - the prospects for disseminating/exploiting the results, as described in the plan for dissemination and use attached to the proposal for an indirect RTD action,
 - compliance with fundamental ethical principles.
2. Proposals for accompanying measures which are subject to a public procurement procedure shall be evaluated on the basis of selection and award criteria defined in accordance with the relevant provisions.
3. Applications for subsidies shall be selected on the basis of:
 - the relevant conditions for participation set out in Articles 4, 5, 6 and 8;and
 - their appropriateness and usefulness in contributing to the objectives and to the scientific and technological content of the Fifth Framework Programme and/or of the specific programme concerned.
4. Applicants responding to an invitation to apply shall be selected on the basis of the criteria set out in the relevant Commission Decision and of the relevant conditions for participation set out in Articles 4, 5 and 6.

SECTION 3: CONTRACTS

Article 11

Community financial participation and eligible costs

1. The Community financial participation shall consist of the reimbursement, in part or in whole, of the eligible costs of the indirect RTD action, in compliance with the provisions of Annex IV to the Fifth Framework Programme.
2. A cost relating to an indirect RTD action shall be eligible where it is necessary for the action in question and is provided for in the contract. It shall be reimbursable provided that the amount has actually been spent and has been recorded in the accounts or the tax documents.
3. In the case of contracts concluded following calls for proposals, the usual method shall be to make payments against justification of the eligible costs of the indirect RTD action.

General expenses may be calculated either on a flat-rate basis or on the basis of the actual costs, provided that, in the latter case, the documents detailing and substantiating those costs are satisfactory.

By agreement with the Commission, another method may be used at the request of those taking part in the proposal for an indirect RTD action:

- (a) in the case of small-scale projects, fixed amounts determined on the basis of an assessment of the estimated costs of the work;
 - (b) in other cases, fixed amounts linked to the achievement of contractually agreed objectives.
4. The notion of additional eligible costs, as referred to in Annex IV to the Fifth Framework Programme, shall comprise the following:
 - the additional costs generated simply by taking part in the indirect RTD action;
 - a flat-rate contribution to the general expenses.

In the case of the research and technological development projects, demonstration projects and integrated projects referred to in Annex IV to the Fifth Framework Programme, recourse shall be had to additional costs where, in the view of the Commission, the system of accountancy used by the participant in an indirect RTD action does not enable the full costs of carrying out the indirect RTD action to be established with sufficient precision.

Article 12

Contracts

Proposals for indirect RTD actions selected following any of the procedures set out in Article 9 shall be subject of a contract.

CHAPTER III

RULES FOR THE DISSEMINATION AND USE OF RESEARCH RESULTS

Article 13

Scope

For the purposes of carrying out the specific programmes implementing the Fifth Framework Programme, the rules for the dissemination and use of research results shall apply, in compliance with:

- international agreements concluded with the Community in particular under Article 130m of the Treaty,
- pre-existing know-how, without prejudice to the contents of the detailed rules of application provided for in Article 22 and of the contracts referred to in Article 12.

Article 14

Adaptation of the rules for the dissemination and use of research results

The rules for the dissemination and use of the research results relating to knowledge resulting from work carried out under indirect RTD actions shall, as a general rule, take into account the level of Community financing.

Article 15

Ownership of knowledge

1. Knowledge resulting from work carried out under direct RTD actions shall be the property of the Community.
2. Knowledge resulting from work carried out under indirect RTD actions the full cost of which is borne by the Community shall, as a general rule, be the property of the Community.

As a general rule, knowledge resulting from work carried out under indirect RTD actions the full cost of which is not borne by the Community shall be the property of the contractors who have carried out the work, including, where applicable, the Community, pursuant to Article 7.

Article 16

Protection of knowledge

Knowledge capable of industrial or commercial application shall be protected in an appropriate manner, with particular regard to the interests of the Community and of the contractors, and in accordance with any applicable legislation or convention.

Article 17

Use of knowledge

1. The Community and the contractors shall use, or ensure that use is made of, any knowledge capable of use in their possession, in conformity with the interests of the Community.
2. The Commission shall ensure that all knowledge suitable for use resulting from indirect RTD actions is used by the contractors. Failing that, it must be disseminated by the contractors or, where appropriate, by the Commission.

Article 18

Making knowledge available with a view to its use

1. As a general rule, knowledge resulting from work carried out under direct RTD actions, together with any information necessary for its use, may be made available to any interested legal entity established in a Member State or in an Associated State, provided that the entity undertakes to use the knowledge or to ensure that it is used in accordance with the interests of the Community. The making available of knowledge and information may be subject to appropriate conditions, in particular concerning the payment of fees.

The making available of knowledge may give rise to specific agreements, notably concerning exclusive rights, in compliance with the applicable rules on competition. The Community shall in that context consider the constraints and risks resulting for the licensee from the investment needed for exploiting the knowledge.

2. Knowledge belonging to the contractors and resulting from work carried out under indirect RTD actions, together with any information necessary for its use, shall be made available:

- to the other co-contractors, provided the legitimate interests, including commercial interests, of the contractors are safeguarded;

and

- to the Community, to meet the requirements of the direct RTD actions or RTD activities carried out by the joint undertakings or other structures set up under Article 130n of the Treaty for the purposes of non-competitive research.

The making available of such knowledge and information may be subject to appropriate conditions. It may give rise to specific agreements, notably concerning exclusive rights, in compliance with the applicable rules on competition. The licensor shall in that context take into consideration the constraints and risks resulting for the licensee from the investment needed for exploiting the knowledge.

The detailed arrangements for making knowledge available to third parties with a view to its use shall take account of the interests of the Community and, in principle, the level of Community financial participation.

Article 19

Dissemination of knowledge

1. The Commission shall disseminate knowledge resulting from work carried out under direct RTD actions and which is capable of dissemination. Account shall be taken of the need to safeguard intellectual and industrial property rights.
2. The Commission shall ensure that knowledge resulting from work carried out under indirect RTD actions and which is suitable for dissemination is disseminated by the contractors or, where appropriate, by the Commission itself.

In this connection, particular account shall be taken of:

- the need to safeguard intellectual and industrial property rights,
- confidentiality,
- the legitimate interests of the contractors, including commercial interests,
- in principle, the level of Community financial participation.

Article 20

Technological implementation plan

1. Contractors taking part in work under indirect RTD actions shall produce, in accordance with the nature of the RTD activity concerned, a technological implementation plan setting out the conditions under which the knowledge is to be disseminated and used. The plan shall be approved by the Commission.
2. The technological implementation plan shall reflect the broad outlines of the dissemination and use plan evaluated along with the original proposal presented to the Commission for participation in indirect RTD actions. Its contents shall be assessed with regard to the interests of the Community and of the contractors.
3. The contractors shall inform the Commission of any action taken on this technological implementation plan. They shall justify any subsequent change in the plan.

CHAPTER IV

FINAL PROVISIONS

Article 21

Provisions which may be laid down in the specific programmes

The rules for the participation of undertakings, research centres and universities and for the dissemination and use of research results may be set out in greater detail or supplemented in the Council Decisions adopting the specific programmes implementing the Fifth Framework Programme.

The first paragraph shall not apply in the case of the definitions set out in Article 1, the training fellowships referred to in the second sentence of Article 6(2)(b) or the list of countries given in Article 24.

Article 22

Detailed rules of application

The detailed rules for applying Articles 4, 8, 11 and 14 to 20 shall be drawn up in accordance with the procedure provided for in Article 23.

Article 23

Procedure for drawing up the rules of application

1. The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.
2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time-limit which the Chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The Chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council forthwith.

In that event, the Commission may defer application of the measures it has decided for a period of not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the time-limit referred to in the previous paragraph.

Article 24

Publication of the list of third countries

The list of the third countries referred to in Article 6(2)(a) shall be published in the *Official Journal of the European Communities*.

Article 25

Reports

The annual report which the Commission sends to the European Parliament and the Council in accordance with Article 130p of the Treaty shall contain information on the implementation of this Decision.

Article 26

Duration

This Decision shall apply to direct RTD actions and indirect RTD actions implementing the Fifth Framework Programme.

Done at Brussels,

For the Council
The President

**Proposal for a
COUNCIL DECISION**

concerning the rules for the participation of undertakings, research centres and universities and for the implementation of the Fifth Framework Programme of the European Atomic Energy Community (Euratom) (1998-2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 7 thereof,

Having regard to the proposal from the Commission⁸,

Having regard to the opinion of the European Parliament⁹,

Having regard to the opinion of the Economic and Social Committee¹⁰,

Whereas the Fifth Framework Programme of the European Atomic Energy Community (Euratom) for research and training activities (1998-2002) (hereinafter referred to as "the Fifth Framework Programme") was adopted by Council Decision No .../Euratom¹¹, whereas the detailed rules for financial participation by the Community, as set out in Annex III to that Decision, must be supplemented by other provisions relating to the participation of undertakings, research centres and universities;

Whereas the new provisions should be part of a complete, coherent and transparent framework;

Whereas the rules for the participation of undertakings, research centres and universities must be adapted to the nature of the indirect research activities, including demonstration activities, and training activities (RTDT); whereas they may vary depending on whether the participant is based in a Member State, an Associated State or a third State, and on its legal structure;

Whereas the participation of legal entities of third States should be envisaged on the basis of international agreements; whereas, however, the agreements concluded with the Community, in particular on the basis of Article 101 of the Treaty, must be implemented in accordance with the principle of reciprocity and the protection of intellectual and industrial property rights; whereas the Community's legal entities must thus enjoy genuine access to the research programmes of the third State concerned;

Whereas the Joint Research Centre (JRC) takes part in indirect RTDT actions on the same basis as legal entities established in a Member State or in an Associated State;

⁸ OJ

⁹ OJ

¹⁰ OJ

¹¹ OJ

Whereas the Community financial participation should be paid to the participants against justification of the eligible costs of the indirect RTDT action although other more appropriate methods may be used;

Whereas RTDT activities should be carried out in accordance with the principles of sound financial management;

Whereas, to the extent necessary for achieving its objectives, the research and training programme relating to controlled thermonuclear fusion and to energy systems connected with nuclear fission may set out in greater detail or supplement the rules for the participation of undertakings, research centres and universities;

Whereas the provisions relating to the dissemination of knowledge are laid down in Articles 12 to 29 of the Treaty;

Whereas, in order to ensure coherence between the activities carried out under the Fifth Framework Programme and those undertaken pursuant to Decision No .../EC of the European Parliament and of the Council concerning the Fifth Framework Programme of the European Community for research, technological development and demonstration activities (1998-2002)¹³, the present Decision and Council Decision 97/.../EC of concerning the rules for the participation of undertakings, research centres and universities and for the dissemination of the research results¹⁴, should be adopted simultaneously and for the same period,

HAS DECIDED AS FOLLOWS:

CHAPTER I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Decision:

- (a) "RTDT activities" means the research activities, including demonstration activities, and training activities described in Annex II to the Fifth Framework Programme.
- (b) "indirect RTDT actions" means one the two ways of implementing the RTDT activities as described in Annex III to the Fifth Framework Programme. Such actions are carried out by third parties under contracts concluded with the Community; the JRC may take part therein under the conditions laid down in Article 6.

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- (c) "Associated State" means a State which is party to an international agreement, concluded with the Community in particular on the basis of Article 101 of the Treaty, under which the State concerned makes a financial contribution to the Fifth Framework Programme. The said agreement must relate to cooperation in research and training.
- (d) "third State" means a State which is neither a Member State nor an Associated State.
- (e) "legal entity" means:
 - any natural person
 - or
 - any legal person, provided that it has been established under Community law or the applicable national law and has been given legal personality or has the capacity, in its own name, to hold rights and obligations of all kinds, to conclude contracts and to be a party to legal proceedings.
- (f) "international organization" means any association of States, other than the Community, established on the basis of a Treaty or similar act, having common institutions and an international legal personality distinct from that of its Member States.
- (g) "potential user of RTDT results" means any legal entity, any international organization or the JRC which, by virtue of its needs and capacities - whether scientific, technological, economic or social - has a specific contribution to make to the use or the ensuring of the use of the results of indirect RTDT actions.

CHAPTER II

RULES FOR THE PARTICIPATION OF UNDERTAKINGS, RESEARCH CENTRES AND UNIVERSITIES

Article 2

Scope

The rules laid down in this Chapter shall apply, in conformity with Article 10 of the Treaty, to the participation of legal entities and international organizations, of the JRC in indirect RTDT actions.

SECTION 1: CONDITIONS FOR PARTICIPATION

Article 3

Number of participants in indirect RTDT actions

1. Indirect RTDT actions shall be carried out by:
 - (a) at least two mutually independent legal entities established in two different Member States or in a Member State and an Associated State;

or

- (b) at least one legal entity established in a Member State or in an Associated State and the JRC;

or

- (c) one or more legal entities established in a third State, or international organizations, acting in cooperation with the minimum number of legal entities established in a Member State or Associated State and the JRC, as required in points (a) or (b).

2. Indirect RTDT actions to be carried out by a single participant, in view of the nature of the RTDT activity to be undertaken or the nature of the indirect RTDT action, must be carried out by:

- (a) a legal entity established in a Member State, in an Associated State or in a third State,
- (b) an international organization,
- (c) the JRC.

Article 4

Conditions for the participation of legal entities from the Member States and associated States

1. Any legal entity established in a Member State or in an associated State may take part in indirect RTDT actions and receive financing from the Fifth Framework Programme, provided that:

- (a) in the case of indirect RTDT actions other than those referred to in points (b) and (c):
 - it is carrying out or is about to carry out an RTDT activity,or
 - it contributes to the dissemination and use of the results of RTDT activities,or
 - it is a potential user of RTDT results;
- (b) in the case of thematic networks and concerted actions:
 - it meets at least one of the conditions set out in point (a),

or

- by virtue of its knowledge of the relevant area of research, it is in a position to contribute substantial added value to the quality of the work to be undertaken;

(c) in the case of accompanying measures, it has the necessary technical know-how to carry out the indirect RTDT action in question.

2. Where the purpose of the indirect RTDT action concerned so permits, any legal entity referred to in paragraph 1 must carry out the work as its principal activity within the Member States or associated States.

Article 5

Conditions for the participation of legal entities from third States and of international organizations

1. Without prejudice to the conditions set out in paragraph 2, any legal entity established in a third State and any international organization may take part in indirect RTDT actions without financing from the Fifth Framework Programme, provided that:

(a) its participation is in the interests of the Community,

(b) the number of participants in the proposal for an indirect RTDT action is in accordance with Article 3,

and

(c) it meets the conditions laid down in Article 4(1) for legal entities from the Member States and associated States.

2. Any legal entity established in a third State may take part:

(a) without receiving financing from the Fifth Framework Programme:

- in the programme of research and training relating to controlled thermonuclear fusion and to energy systems connected with nuclear fission, open to the third State in which it is established, in accordance with an international agreement concluded with the Community in particular under Article 101 of the Treaty and relating to cooperation in research and training, in accordance with the principles, conditions and limits laid down in that agreement;

- in the programme of research and training referred to in the first indent, open in the absence of an international agreement by this programme to the third State in which the entity is established;

- in cases other than those referred to in the first and second indents, in the programme of research and training mentioned in the first indent, provided that its participation is duly justified, that is, it is essential for implementing all or part of the research and training programme in accordance with the objectives of that programme.

- (b) exceptionally with financing from the Fifth Framework Programme provided that it corresponds to one of the cases referred to in point (a) and provided that this financing is duly justified, that is, it is essential for achieving the objectives of the indirect RTDT action in question.

The provision laid down in this point shall not apply to training fellowships as defined in Annex III to the Fifth Framework Programme.

3. In the case of RTDT activities specific to the countries of Central and Eastern Europe and to the States which were formerly part of the Soviet Union, any legal entity which is established in one of those third States and meets the conditions set out in paragraph 1 may take part and receive financing from the Fifth Framework Programme in accordance with the procedures laid down in the programme of research and training relating to controlled thermonuclear fusion and to energy systems connected with nuclear fission.

4. Any international organization may, exceptionally, receive financing from the Fifth Framework Programme provided that:

- (a) in the case of indirect RTDT actions other than accompanying measures,

- the financing is duly justified, that is, it is essential for achieving the objectives of the indirect RTDT action in question,

and

- the international organization has, or is about to have, a basic structure for the proposed work located:

- (i) in a Member State or Associated State,

or

- (ii) in a third State, provided that the said structure is essential for carrying out the proposed work;

- (b) in the case of accompanying measures, it has the necessary technical skills and know-how, which are not readily accessible or are unavailable in the Member States or the Associated States.

Article 6

Conditions for the participation of the JRC

Subject to the budgetary and administrative measures necessary to enable the JRC to take part in indirect RTDT actions, the JRC shall be bound by the same conditions and have the same rights and obligations as the legal entities established in a Member State or an associated State taking part in indirect RTDT actions.

Article 7

Conditions relating to resources

1. Any legal entity, international organization and the JRC must:
 - when filing its proposal for an indirect RTDT action, have at least the potential resources needed for carrying it out;
 - when the contract is signed, have the essential resources needed for carrying it out.
2. The resources needed for carrying out the indirect RTDT action shall be understood as being human resources, infrastructure, financial resources and, where appropriate, intangible property.

SECTION 2 - PROCEDURES

Article 8

Procedures to be applied

1. As a general rule, indirect RTDT actions other than accompanying measures shall be the subject of calls for proposals published in the *Official Journal of the European Communities*. The calls for proposals may, where appropriate, be preceded by a call for expressions of interest of an informative nature.

Indirect RTDT actions relating to controlled thermonuclear fusion and carried out under the contracts of Association, the NET Agreement, the four-power cooperation agreement between the Community, Japan, the Russian Federation and the United States of America concerning the engineering design activities of the International Thermonuclear Experimental Reactor (ITER), the Joint European Torus (JET) Joint Undertaking and any other agreement concluded by the Community shall comply with the procedures laid down in those agreements.

2. Accompanying measures shall, where appropriate, be the subject of:
 - calls for proposals, in accordance with procedures identical to those described in paragraph 1,
 - public procurement procedures where the indirect RTDT action consists of a purchase or a service, in accordance with the applicable provisions,

- invitations to apply, where the measure concerned requires the Commission to take account, in a balanced fashion, of the various research players, without prejudice to other procedures designed to achieve the same result in the case of the high-level experts referred to in Article 5(2) of the Fifth Framework Programme.

3. Indirect RTDT actions carried out as pilot schemes shall be governed by procedures appropriate to those actions.

Article 9

Selection criteria and conditions applicable in accordance with the type of procedure

1. Proposals for indirect RTDT actions resulting from calls for proposals and pilot schemes shall be selected on the basis of the conditions for participation set out in Articles 3 to 7 and the criteria set out in points (a), (b) and (c), which shall be applied in accordance with the category of indirect RTDT action and with the nature of the RTDT activity:
 - (a) the categories of criteria listed in Annex I to the Fifth Framework Programme;
 - (b) the additional criteria set out in the research and training programme relating to controlled thermonuclear fusion and to energy systems connected with nuclear fission;
 - (c) the following criteria:
 - the innovative nature of the proposal for an indirect RTDT action,
 - the prospects for disseminating/exploiting the results, as described in the plan for dissemination and use attached to the proposal for an indirect RTDT action.
2. Proposals for accompanying measures which are subject to a public procurement procedure shall be evaluated on the basis of selection and award criteria defined in accordance with the relevant provisions.
3. Applicants responding to an invitation to apply shall be selected on the basis of the criteria set out in the relevant Commission Decision and of the relevant conditions for participation set out in Articles 3, 4 and 5.

SECTION 3: CONTRACTS

Article 10

Community financial participation and eligible costs

1. The Community financial participation shall consist of the reimbursement, in part or in whole, of the eligible costs of the indirect RTDT action, in compliance with the provisions of Annex III to the Fifth Framework Programme.

2. A cost relating to an indirect RTDT action shall be eligible where it is necessary for the action in question and is provided for in the contract. It shall be reimbursable provided that the amount has actually been spent and has been recorded in the accounts or the tax documents.
3. In the case of contracts concluded following calls for proposals, the usual method shall be to make payments against justification of the eligible costs of the indirect RTDT action.

General expenses may be calculated either on a flat-rate basis or on the basis of the actual costs, provided that, in the latter case, the documents detailing and substantiating those costs are satisfactory.

By agreement with the Commission, another method may be used at the request of those taking part in the proposal for an indirect RTDT action:

- (a) in the case of small-scale projects, fixed amounts determined on the basis of an assessment of the estimated costs of the work;
- (b) in other cases, fixed amounts linked to the achievement of contractually agreed objectives.

4. The notion of additional eligible costs, as referred to in Annex III to the Fifth Framework Programme, shall comprise the following:

- the additional costs generated simply by taking part in the indirect RTDT action;
- a flat-rate contribution to the general expenses.

In the case of the research and technological development projects, demonstration projects and integrated projects referred to in Annex III to the Fifth Framework Programme, recourse shall be had to additional costs where, in the view of the Commission, the system of accountancy used by the participant in an indirect RTDT action does not enable the full costs of carrying out the indirect RTDT action to be established with sufficient precision.

Article 11

Contracts

Proposals for indirect RTDT actions selected following any of the procedures set out in Article 8 shall be subject of a contract.

CHAPTER III
FINAL PROVISIONS

Article 12

**Provisions which may be laid down in the research and training programme
relating to controlled thermonuclear fusion and to energy systems
connected with nuclear fission**

The rules for the participation of undertakings, research centres and universities may be set out in more detail or supplemented in the Council Decision adopting the research and training programme relating to controlled thermonuclear fusion and to energy systems connected with nuclear fission, implementing the Fifth Framework Programme.

The first paragraph shall not apply in the case of the definitions set out in Article 1, the training fellowships referred to in the second sentence of Article 5(2)(b) or the list of third States given in Article 14.

Article 13

Detailed rules of application

The Commission shall lay down the detailed rules for applying Articles 3, 7 and 10.

Article 14

Publication of the list of third States

The list of third States referred to in Article 5(2)(a) shall be published in the *Official Journal of the European Communities*.

Article 15

Reports

The annual report which the Commission sends to the European Parliament and the Council in accordance with Article 5(4) of the Fifth Framework Programme shall contain information on the implementation of this Decision.

Article 16

Duration

This Decision shall apply to indirect RTDT actions implementing the Fifth Framework Programme.

Done at Brussels,

For the Council
The President

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